

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5455 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

NITU ALIAS VIJAY SATYANARAYAN YADAV

Versus

COMMISSIONER OF POLICE FOR CITY OF SURAT

Appearance:

MR ANIL S DAVE for Petitioner

Mr. Nigam Shukla, learned Addl. P.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 08/10/96

ORAL JUDGMENT ;

1. Through this petition the petitioner challenges the detention order dated 16-4-96 passed by the Police Commissioner, Surat City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on the same day and since then the petitioner is under detention

lodged at Sabarmati Central Prison, Sabarmati, Ahmedabad.

2. The present Special Civil Application was filed on 24-7-96 and on 25-7-96 Rule returnable on 19-8-96 was issued. The respondents have not filed any reply nor any affidavit has been filed on behalf of the detaining authority.

3. The grounds of detention enclosed with the detention order show that there were 3 criminal cases pending against the petitioner with regard to the offences under Chapters 16 and 17 of the I.P.C. on different dates at different places in Surat City in the area of Limbayat. All the 3 cases are pending trial in the court and the petitioner has been bailed out in all the three cases. The detaining authority has narrated the allegations against the petitioner in detail and besides these 3 criminal cases, the statements of 3 witnesses have been recorded with regard to the incidents dated 16-10-95, 5-11-95 and 22-2-96 showing that the petitioner was using deadly weapon in committing offences, he was a head strong and dangerous person and was engaged in Gundagardhi and other anti social activities. The witnesses have requested that their identity be kept secret because they were frightened and afraid of the petitioner and, therefore, while invoking the provisions of S.9(2) of the Act, the identity of the witnesses have been kept secret. The detaining authority has found that the other measures to be taken against the petitioner would not serve the purpose of preventing the petitioner from committing the anti social activities and, therefore, he felt satisfied that it was necessary to detain the petitioner and accordingly detention order was passed.

4. After filing of this petition, by moving a Civil Application amendment was sought in the petition and the amendment was allowed on 21-8-96 and, thereafter the same was carried out incorporating para 17(a), 17(b) and (17(c). Even no reply has been filed to the paragraphs which were included by amendment whereas certain factual aspects had been raised by the petitioner having bearing on the validity and legality of the detention order.

5. The detention order has been challenged on various grounds, but Mr.. Dave, appearing for the petitioner, laid stress on the ground that the petitioner had not been supplied the bail application and the bail orders of the co-accused in C.R. No.157/95, which was registered against him at Police Station, Limbayat, Surat. It has been submitted that the bail application

and the bail order of the co-accused related to the same offence, registered at the same Police Station and the same were required to be supplied to the petitioner-detenu at the time of communication of the grounds of detention, but the same was not supplied. It has been further alleged that the sponsoring authority had not placed the aforesaid vital documents before respondent No.1, the detenu had made an application for bail before learned Addl. Sessions Judge, Surat and in the same application the detenu had made an averment to the effect that the accused in C.R.No.157/95 had been enlarged on bail by the Court of Sessions and, therefore, he could not be discriminated. It has been further alleged by Mr.Dave that the important averments made in the Application would have tilted the mind of the detaining authority had these documents been placed before it by the sponsoring authority. For these reasons Mr. Dave has submitted that the subjective satisfaction of the detaining authority had been vitiated and his right to make effective representation under Article 22(2) of the Constitution of India has been violated. It has also been submitted by learned counsel for the petitioner that the petitioner had made a representation through his advocate to the Sate Home Minister on 24-7-96, but he had not received any communication. It has also been submitted by learned counsel for the petitioner that he had also demanded the copies of the aforesaid documents i.e. bail application and bail order in his representation dated 24-7-96 and despite demand these documents were not supplied to him.

6. The aforesaid facts have not been controverted by filing any reply or any affidavit of the detaining authority and all that has been submitted by Mr. Shukla, the learned Addl.P.P. on behalf of the respondents, is that the representation dated 24-7-96 had been decided in time.

7. I have considered the submissions made on behalf of both the sides. It has not been disputed either by filing a reply or even orally by the learned Addl. P.P. that the copies of the bail application and the bail orders of the co-accused in C.R.No.157/95, which was registered against the petitioner at Limbayat Police Station, Surat, had not been supplied to the petitioner either at the time when the detention order was served or even thereafter i.e. after the petitioner's representation dated 24-7-96 in which these documents had been demanded. Such documents have been held to be documents vital to make effective representation. Petitioner's grievance is covered by the principles laid

down in (1988) 1 SCC 287, State of U.P. v. Kamal Kishore Saini, Paras 7 and 15 thereof and decision rendered on 13-8-96 in Special Civil Application No.5103/96 by this Court on the basis of the Supreme Court decision in the case of State of U.P. v. Kamal Kishore Saini (Supra). In this view of the matter, the impugned detention order dated 16-4-96 passed against the petitioner deserves to be quashed and set aside and the detention can not be allowed to continue.

8. Accordingly this Special Civil Application is allowed. The impugned detention order dated 16-4-96 passed by Police Commissioner, Surat City is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.